

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

GRANT W. SMITH

Respondent.

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Supreme Court #SC86187

RESPONDENT'S BRIEF

HANRAHAN, SMITH, TRAPP & VALENTINE

**GRANT W. SMITH #34720
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ATTORNEYS FOR RESPONDENT

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TABLE OF AUTHORITIES

CASES

<i>In re Westfall</i> , 808 S.W.2d 829 (Mo. banc 1991)	6,7
<i>In re Wiles</i> , 107 S.W.3d 228 (Mo. banc 2003)	6,7

STATEMENT OF JURISDICTION

The jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, the common law of this Court, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

The Respondent adopts the Statement of Facts contained in Informant's Brief in its entirety.

POINT RELIED ON

THE SUPREME COURT SHOULD SUSPEND RESPONDENT FOR 18 MONTHS, STAY THE SUSPENSION, AND ORDER RESPONDENT TO SUBMIT TO AN 18 MONTH PERIOD OF PROBATION SUBJECT TO THE CONDITIONS ENUMERATED IN THE JOINT RECOMMENDATION FOR SANCTIONS (APP. 18-25), BECAUSE THE SANCTION AGREED TO BETWEEN RESPONDENT AND OCDC BEST SERVES THE DUAL PURPOSES OF LAWYER DISCIPLINE IN THAT CLOSE MONITORING OF RESPONDENT'S PRACTICE AND THE LAW PRACTICE MANAGEMENT EDUCATIONAL COMPONENT OF THE PROBATION SHOULD PROTECT THE PUBLIC AND THE PROFESSION FROM RECURRENCE OF THE MISCONDUCT THAT HAS MARKED RESPONDENT'S PAST PRACTICE.

In re Westfall, 808 S.W.2d 829 (Mo. banc 1991)

In re Wiles, 107 S.W.3d 228 (Mo. banc 2003)

ARGUMENT

THE SUPREME COURT SHOULD SUSPEND RESPONDENT FOR 18 MONTHS, STAY THE SUSPENSION, AND ORDER RESPONDENT TO SUBMIT TO AN 18 MONTH PERIOD OF PROBATION SUBJECT TO THE CONDITIONS ENUMERATED IN THE JOINT RECOMMENDATION FOR SANCTIONS (APP. 18-25), BECAUSE THE SANCTION AGREED TO BETWEEN RESPONDENT AND OCDC BEST SERVES THE DUAL PURPOSES OF LAWYER DISCIPLINE IN THAT CLOSE MONITORING OF RESPONDENT'S PRACTICE AND THE LAW PRACTICE MANAGEMENT EDUCATIONAL COMPONENT OF THE PROBATION SHOULD PROTECT THE PUBLIC AND THE PROFESSION FROM RECURRENCE OF THE MISCONDUCT THAT HAS MARKED RESPONDENT'S PAST PRACTICE.

The Respondent agrees with the Argument presented in Informant's Brief (Brief of Informant, 12-16). The recommendation of the panel as to the examination by a health care professional was never an issue in the Respondent's disciplinary record, was not an issue at the hearing of the panel, and has not been an issue ever addressed by the Informant and the Respondent prior to the panel's recommendation. The Respondent believes that such a requirement has no factual basis in the past history of the Respondent or the record before this Court.

The Respondent further agrees that both *In re Wiles*, 107 S.W.3d 228 (MO. banc 2003) and *In re Westfall*, 808 S.W.2d 829 (MO. banc 1991) are applicable to

the instant matter. No allegations have been made against the Respondent relating to misuse of client's funds, trust account issues, or as to the safekeeping of property.

Lastly, the Respondent disputes the panel's statement that no remorse was expressed for the misconduct. The Respondent attended the hearing of the panel having previously executed a Stipulation with OCDC. The Respondent was merely asked if he wished to make any statement once the Stipulation was admitted in to the record. The Respondent submits that making no excuses for past conduct is not the same as expressing a lack of remorse. The Respondent acknowledged the past conduct, explained actions he was taking to avoid these issues, and cooperated with OCDC in an attempt to resolve these issues.

CONCLUSION

Based on all of the foregoing, Respondent prays that the Court adopt the Stipulation of the Office of Chief Disciplinary Counsel and the Respondent.

Respectfully submitted,

HANRAHAN, SMITH, TRAPP & VALENTINE

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of October, 2004, two copies of Respondent's Brief have been sent via first class mail to: Ms. Sharon K. Weedon, Attorney at Law, 3335 American Avenue, Jefferson City, MO 65109.

Grant W. Smith

CERTIFICATION: RULE 84.06

I certify to the best of my knowledge, information and belief, that this brief;

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 767 words, according to Microsoft Word, the word processing system used to prepare this brief; and
4. That Norton Anti Virus software was used to scan the disc for viruses and that it is virus free.

Grant W. Smith